No. 12,659

United States Court of Appeals

For the Ninth Circuit

EDWARD D. COFFEY,
Appellant,

vs.

ANTONIO POLIMENI,
Appellee.

BRIEF FOR APPELLEE.

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STATEMENT OF THE CASE.

Plaintiff, Antonio Polimeni, during and for more than thirty years prior to the times involved herein had been a resident of South Naknek, Alaska. The defendant Edward D. Coffey maintained an insurance office at Anchorage, Alaska, and acted as agent and broker for at least fifteen different insurance companies (Tr. 146). Coffey had, in previous years, acted as agent for Polimeni in procuring insurance on real property and an airplane (Tr. 240-241).

On March 30, 1948, Polimeni wrote to Coffey requesting information concerning insurance on his restaurant building, equipment, supplies and beer and wine supply (Tr. 166; Plaintiff's Ex. 1).

On April 9, 1948, Coffey replied, quoting a rate for such insurance and requesting a description of the location of the property, distance from post office or public school building and requesting type of construction and occupancy of any buildings within 100 feet of the restaurant to be insured (Tr. 167-8; Plaintiff's Ex. 2).

On April 17, 1948, Polimeni replied to Coffey as follows:

"Plaintiff's Exhibit No. 3

South Naknek, Alaska
April 17, 1948.

Edward D. Coffey,
Anchorage, Alaska

Dear Sir:

Having received your reply to my inquiry concerning my insurance, I am supplying necessary description of the property and equipment.

The main restaurant building is (1000′) one thousand feet from the South Naknek Territorial School Building and approximately (300′) three hundred feet from the post office.

1. Main Building: 30′-30′

Restaurant—two story building housing booths, counter, kitchen, pastry room, laundry on the first floor, with five rooms on second floor for living quarters for owner and hired assistants, and basement (18′-20′) eighteen by twenty feet providing storage capacity for restaurant supplies and special compart-

ment for automatic pump connected to the well inclosed within the building with descent from kitchen. Attached to kitchen and pertaining to service thereof are kitchen range, hot and cold water, tank, and sink.

2. 8′-10′ building 50′ from main building.

This building is used for housing light plant providing electrical power for restaurant and used as a repair shop.

3. 6′-8′ 20 feet from main building

Separate restrooms with shields for entrances. These buildings mentioned have tin roofs and are to be insured en masse for ($6,000.00) six thousand dollars.

Equipment and Supplies

Furniture:

Five beds complete with all season bedding, three wardrobe bureaus with clothing of owner and assistant, six chairs, two tables, one sewing machine, and one phonograph (electric).

Fixtures:

Washing machine, electric iron, complete line of China and silverware for serving one hundred capacity, and bowls, platters, and beer and wine glasses.

Machinery:

Gasoline engine, automatic water pump, 8 K.W. light plant.

The furniture, fixtures, and machinery are to be insured for ($1,500.00) fifteen hundred dollars.

Stock:

Complete line of food supplies for restaurant operation for six months including small amounts of beer and wine. The stock is to be insured for ($2,500.00) two thousand five hundred dollars.

I trust this is the complete and necessary description for my insurance application.

Thank you,
Sincerely,
/s/ Antonio Polimeni

Received April 24, 1949." (Tr. 168; Plaintiff's Ex. 3.)

Polimeni's letter of April 17th was received by Coffey on April 24, 1948, read by Grace McConnell, Coffey's office manager (Tr. 249 and 289), and given by her to the fire insurance girl in Coffey's office to write Polimeni for a breakdown on the amount of insurance desired on each of the buildins. Polimeni's letter was lost or misplaced by the fire insurance girl and not found for 62 days (Tr. 290). The letter had never been referred to Coffey himself (Tr. 291) and in the ordinary course of office routine the fire insurance girl would have signed the reply. Neither Coffey nor his office manager maintained a check-off method to determine whether the fire insurance girl carried out her instructions in such instances (Tr. 293 and 295).

No reply having been received to his letter of April 17, 1948, Polimeni wrote to Coffey as follows on June 1, 1948:

"Plaintiff's Exhibit No. 4

So. Naknek, Alaska
June 1, 1948

Ed. Coffey,
Anchorage, Alaska

Dear Mr. Coffey:

I have written you before concerning my insurance for my restaurant and I have received no reply.

I would like to hear from you immediately and learn the particulars and premium of the policy. Are there corrections to be made or what needs to be done?

Please reply immediately.

Thank you.

Sincerely,
/s/ Antonio Polimeni." (Tr. 170; Plaintiff's Ex. 4.)

This letter was received and read by Grace McConnell, Coffey's office manager, who remembered Polimeni's letter of April 17th. McConnell asked for the letter, but it could not be found (Tr. 297). A search was conducted for not more than one day without success (Tr. 297) whereupon search was discontinued and McConnell instructed the fire insurance girl to write to Polimeni and "get the information again". (Tr. 297). As a result, the following letter was written:

"June 4, 1948.

Mr. Antonio Polimeni,
South Naknek, Alaska.

Dr. Mr. Polimeni:

Re: Fire Insurance on Building occupied as Restaurant & Dwg.

We are in receipt of your letter of June 1st in regard to your insurance. We wrote you the following letter, mailed April 9, 1948, but evidently it was lost, so we will quote same:

'In reply to your letter of March 30th wish to advise that the fire insurance rate on both building and contents is $3.00 per $100 of insurance for one year.

'It is necessary to place a specific amount of Insurance on the building and a specific amount on equipment and supplies. Beer and wine would be insured under stock. We enclose form which indicates how the insurance is divided.

'If insurance is ordered, we will need to have a description of the location of the property. If the land is unsurveyed so you cannot give us lot and block numbers, please advise how far distant your building is from the Post Office or the Public School Building. Also advise the construction and occupancy of any buildings within 100 feet of your building.'

We trust that this is the information you desire.

Yours very truly,

Edw. D. Coffey"

(Tr. 171; Plaintiff's Ex. 5.)

The testimony does not indicate whether Polimeni ever received this letter (Tr. 140 and 238). Polimeni left the restaurant in the charge of Albert Ruhl and went fishing for king salmon on the 10th or 15th of June, 1948 (Tr. 128). Ruhl closed the restaurant down two weeks later and went fishing himself (Tr. 128). After going fishing Ruhl made it a practice to check the restaurant when back in South Naknek between fishing trips, approximately once a week and on or about July 20, 1948, while unoccupied, the main building, equipment and stock were completely destroyed by fire (Tr. 124-125) while Ruhl and Polimeni were on fishing grounds.

On July 23, 1948, Coffey wrote the following letter to Polimeni:

"Plaintiff's Exhibit No. 6

Edward D. Coffey
General Insurance
Anchorage, Alaska

July 23, 1948.

Mr. Antonio Polimeni,
South Naknek, Alaska

Dear Mr. Polimeni:

Re: Fire Insurance on Building occupied as Restaurant and Dwg.

We wish to apologize for having mislaid your letter of April 17 giving us the details of the property you wish to have insured. We enclose herewith copy of your letter for reference as we need the following breakdown before we can issue policies:

Building No. 1.—Please designate a specific amount on the building and a specific amount on the equipment.

Building No. 2.—Specific amount on building.

Building No. 3.—Specific amount on building and specific amount on 8 K.W. light plant.

We assume the stock of food supplies is contained within the restaurant and no other building.

Will you kindly give us this information so we may issue your policies.

Very truly yours,

Edw. D. Coffey,

By /s/ M. Kaser."

(Tr. 172; Plaintiff's Ex. 6.)

On August 2, 1948, Polimeni, through Hal M. Marchbanks, U. S. Commissioner at Naknek, informed Coffey of the loss (Tr. 173; Plaintiff's Ex. 7) and Coffey telegraphed his reply stating that no insurance was in effect (Tr. 174; Plaintiff's Ex. 8).

The testimony shows that Polimeni acquired the restaurant building in 1945 and during the following three years practically rebuilt it from monies earned by him as a fisherman (Tr. 73). Rebuilding consisted of tearing off the original roof and rebuilding it with gables to create five rooms upstairs (Tr. 120); all new windows were installed, plywood partitions installed, new doors and locks; the well was dug down to 60 feet, cased, and automatic electric pump installed. The basement was enlarged, steps installed and walls finished off with redwood and all nine rooms were

insulated and finished with masonite. The value of the building, equipment and inventory was between $13,000 and $16,000.

Plaintiff's first cause of action is based upon defendant's negligence in misplacing plaintiff's letter of April 17, 1948 and thereby failing to insure the property (Tr. 3). His second cause of action is based upon defendant's breach of contract to procure insurance (Tr. 4-5).

Upon conclusion of plaintiff's case the Court ruled that the evidence was insufficient to support the cause of action in contract (Tr. 31) and refused to reconsider this ruling later in the case when plaintiff made an offer of proof of newly discovered evidence (Tr. 319) in support of the contract theory.

The trial proceeded on the negligence theory and went to the jury and verdict returned in favor of plaintiff in the sum of $9,200 (Tr. 55). The jury obviously deducted $300 as the cost of premium had insurance been duly procured and $500 as the value of the two buildings not destroyed by fire (Instr. No. 9; Tr. 47).

ARGUMENT.

As conceded at the beginning of the argument in appellant's brief, there is a line of cases holding insurance agents and brokers liable for negligent failure to procure insurance for an applicant.

This doctrine, as far as our Courts are concerned, appears to have developed from *Morris v. Sumerl,*

C. C. Dist. Penn. 1808, Fed. Case 9,837, where the Court said that if one merchant is in the habit of effecting insurance for another and neglects to have same done when ordered, he is himself answerable for the loss. The jury was so instructed. The Court said:

> "If he can excuse himself for not having effected the insurance, he is answerable for nothing; if he cannot, he is then answerable for the whole."

The doctrine was again applied in *Manny v. Dunlap,* Cir. Ct. Iowa 1869, Fed. Case 9,047 where plaintiff's agent failed to procure insurance as directed and the Court held that an agent to procure insurance, when he has undertaken, or it has become his duty to insure, and without good reason he has neglected to do so, he is liable for all loss which may occur, that would have been covered by the policy. Citing *Morris v. Sumerl,* supra.

In 1897 in Hawaii in *Mary S. Carter et al. v. Manhattan Life Ins. Co.,* 11 Hawaii 69, an agent, for no good reason, retained a life insurance application from November 12, 1944 until January 5, 1895 before forwarding. The Court held:

> "A life insurance company is liable for the negligence of its agent in failing to forward an application for insurance within a reasonable time, and if in consequence of such negligence the application is not accepted prior to death of applicant, and if it would have been accepted prior thereto but for such negligence, the measure of damages is the amount for which the policy would have been issued."

In *Boyce v. Union Dime Loan Assn.,* S/C Penn. 1907, 67 A. 767, a mortgagee, for his own advantage, agreed to insure and collect from mortgagor, but in insuring, misdescribed the property. After loss, mortgagee was held liable in damages on *assumpsit,* but the Court said it was immaterial whether mortgagee was charged as an insurer or as guilty of negligence in not effecting proper insurance, citing *Manny v. Dunlap,* supra.

In *Wilkin et al. v. Capital Fire Insurance Co. of Lincoln, Neb.,* 1916, 99 Neb. 828, 157 N.W. 1021, an agent of insurance company sent application to a bank to be executed—applicants signed and left with bank to return—bank failed to return for ten days—loss by fire. The Court held that the delay of the bank in forwarding application must be considered the delay of the agent, for which the insurance company was responsible and *that the question of the liability of the insurance company for failure to duly act upon the application was for the jury.* (Emphasis supplied).

In *Rezac v. Zima,* Kan. 1915, 153 Pac. 500, it was held that where a broker or agent undertakes to procure insurance for another, he is bound to exercise reasonable diligence to obtain it and give timely notice to his principal in case he is unable to *procure it and any loss resulting from inattention, incapacity or fraud makes him liable.* (Emphasis supplied).

See also the following cases to same effect: *Boyer v. State Farmers Mutual Hail Ins. Co.,* 86 Kan. 442, 121 Pac. 329; *Harrod v. Latham,* Kan., 95 Pac. 11;

Wallace v. Hartford Fire Ins. Co., Idaho 1918, 174 Pac. 1009; *Security Ins. Co. of New Haven, Conn. v. Cameron et al.,* Okla. 1922, 205 Pac. 151; *Stark v. Pioneer Casualty Co. et al.,* Calif. 1934, D.C.A. 2nd Dist., Div. 2, 34 Pac. (2d) 731, hearing denied by S/C Sept. 4, 1934; *Elam v. Smithdeal Realty,* N. Car. 1921, 109 S.E. 632; *Mayhew v. Glazier et al.,* Colo. 1920, 189 Pac. 843; *Lindsay v. Pettigrew,* S.D., 59 N.W. 726.

On pages 15, 16 and 17 of his brief appellant has cited American Jurisprudence on Negligence and Contracts in General, but has failed to cite American Jurisprudence on the specific point here involved. See 29 Am. Jur., Insurance, Sec. 108, p. 130 as follows:

> "Failure to Procure or Maintain Insurance—It may be laid down as a general rule that a broker or agent who, with a view to compensation for his services, undertakes to procure insurance on the property of another, and, unjustifiably and through his fault or neglect, fails to do so, will be held liable for any damage resulting therefrom * * * it is generally accepted that the undertaking in itself imposes a duty to procure such insurance, and according to some authorities, the trust and confidence imposed in a broker employed to secure insurance on property afford a sufficient consideration for his undertaking to carry out the instructions given."

On page 17 of his brief appellant cites *American Life Insurance Co. v. Nabors,* Tex. 1934, 76 S.W. (2d) 497, 498 in support of the proposition that an insurance company is at liberty to choose its own risks,

and may accept or reject applicants as it may see fit. It is to be noted that this case concerned an *application for life insurance,* and in such cases the application specifically states that the contract of insurance is not in effect until the application has been accepted by the company. Such holdings are understandable as it is common knowledge that reports of medical examination and family medical history are almost always forwarded with the application and closely scrutinized by insurance company doctors. Nevertheless the Courts have held in many life insurance cases that negligent failure to either accept or reject the application will make the company liable if the application would have been accepted in the ordinary course of business except for inexcusable delay.

In direct contrast to the life insurance cases supporting appellant's theory are the cases involving fire, hail, casualty insurance, etc., where the agent of such insuring companies can ordinarily effect an immediate oral contract of insurance on such risks, with or without the use of a "binder" notation. 29 Am. Jur., Insurance, Sec. 135, p. 151 and such contracts of insurance are binding upon the company *until rejected by the company,* in contrast with life insurance applications that do not create a contract until accepted by the company of the agent.

The facts in this case clearly show a negligent failure on the part of Coffey to procure insurance after undertaking to do so. Coffey had acted as broker or agent for Polimeni on two occasions prior to the present case; once for insurance on a house in Egegik, Alaska (Tr. 240) and for insurance on an airplane

(Tr. 242). In Polimeni's offer of proof (Tr. 319), evidence was offered to prove that Polimeni had discussed insurance on the restaurant building involved herein, in Coffey's office in Anchorage in late 1947 or early in 1948; that Coffey agreed to procure insurance on the building when Polimeni was ready, after completion of the building and inventory.

Coffey represented at least fifteen insurance companies (Tr. 146), advertised extensively "Coffey Insures Everything—Remember?" (Tr. 207). Polimeni was an almost illiterate Italian fisherman and cook, with a speech impediment, and hardly able to write (Tr. 84), who had his correspondence prepared by the South Naknek school teacher and friends (Tr. 132). Having been served by Coffey on at least two previous occasions and having been advised by Coffey that he would insure the buildings and stock involved herein it was natural for Polimeni to cause the letter of March 30, 1948 to be written to Coffey (Plaintiff's Ex. No. 1; Tr. 166). It is interesting to note that Coffey's reply (Plaintiff's Ex. 2; Tr. 167) states that "if insurance is ordered" certain information must be supplied, etc., and to observe in Polimeni's prompt reply of April 17, 1948 (Plaintiff's Ex. No. 3; Tr. 168) that all the information required by Coffey "if insurance is ordered" is supplied in the greatest of detail. This letter was received by Coffey on April 24, 1948, read by Grace McConnell (Tr. 289) and given by her to the fire insurance girl without reference to Coffey himself. The fire insurance girl was instructed to write to Polimeni to obtain a breakdown on how the building insurance was to be divided between the main

building, the two-holer outhouse, and the generator house (Tr. 293). The letter was lost in the office confusion and not found until July 23, 1948, 62 days later (Tr. 290). *No person in Coffey's office knew the letter was lost until Polimeni's letter of June 1, 1948, was received* (Plaintiff's Ex. No. 4; Tr. 170). The reason no one in Coffey's office knew the letter was lost was because no part of the correspondence was ever referred to Coffey (Tr. 290), Grace McConnell feeling that she was "perfectly capable of handling it myself" and according to her own personal underwriting policy (Tr. 291).

Under Coffey's office routine, the fire insurance girl should have written the letter to Polimeni, signed it herself, and turned it over to the mail girl (Tr. 295). *Neither Coffey nor Grace McConnell would have seen the reply, if one had been written, and neither Coffey nor McConnell maintained a check-off system to determine whether the fire insurance girl carried out instructions in such situations* (Tr. 295). And the fire insurance girl lost the letter of April 17 and forgot about it. No one in Coffey's office realized it was lost because of the lack of any system whatever for handling such matters.

After receiving Polimeni's inquiry of June 1, 1948, saying in part "I would like to hear from you immediately to learn the particulars and premium of the policy * * * Please reply immediately * * *" (Tr. 170-171). Grace McConnell caused a short unsuccessful search to be made in the office for the letter of April 17th, *which she remembered* (Tr. 297). *No*

other attempt was made to locate the missing letter and the matter was forgotten on the assumption that sooner or later Polimeni would send the information again (Tr. 298). In directing the fire insurance girl to ask for the information again, McConnell failed to tell the fire insurance girl to ask Polimeni to segregate the amount among the three buildings (Tr. 298).

McConnell did not keep the Polimeni file on her desk to remind her to look for the missing letter again (Tr. 298).

No attempt whatever was made to obtain coverage on Polimeni's property before the letter of April 17th was lost.

Appellant contends on page 21 of his brief, that Polimeni's failure to answer Coffey's letter of June 4, 1948 (Plaintiff's Ex. No. 5; Tr. 171) amounted in effect to contributory negligence. This contention amounts only to an argument with the verdict of the jury which had placed before it the question of contributory negligence in Instruction No. 8 (Tr. 47) and the question of whether or not Coffey's delay was the proximate cause of Polimeni's loss in Instructions Nos. 4, 5, and 6 (Tr. 45-46).

Coffey was not only negligent in misplacing or losing Polimeni's letter of April 17th, but was, according to the general custom in the insurance world, negligent again in failing to place insurance on Polimeni's property immediately upon receipt of the letter of April 17th.

Joseph Sheahan, a witness at this trial, testified that he was engaged in the insurance business in Anchor-

age, Alaska; that he had been in the insurance business for 32 years; *that he had worked for Coffey for over a year, terminating on January 22, 1948, just three months before Coffey received Polimeni's letter of April 17th* (Tr. 160-161). Sheahan was subpoenaed as a witness. On page 184 and following of the transcript the following questions and answers are reported (direct examination of Mr. Sheahan by Mr. Nesbett):

"Q. You testified did you not that your association with Mr. Coffey terminated on January 22nd, 1948?

A. That is right.

Q. Now, Mr. Sheahan, if you had received that letter of April 17th on Janary 21st of 1948, while you were still associated with Mr. Coffey, could you through Mr. Coffey's companies have effected a ten thousand dollar coverage on Mr. Polimeni's restaurant?

* * * irrelevant * * *

A. Yes. I would have put twenty-five hundred dollars, or perhaps fifteen hundred in an American Company and wired to Lloyd's in Seattle.

Q. In Seattle?

A. For the balance.

Q. Would you have requested telegraphic confirmation, Mr. Sheahan, as a general practice?

A. Yes. Oh, yes, they wire right back, usually the next day.

Q. Mr. Sheahan, what is the practice, or what was the practice in Mr. Coffey's office with respect to telegraphic requests and telegraphic confirmations as of January 22nd, when you terminated?

A. We telegraphed for coverage. We would ask for a reply immediately. Confirmation in other words."

Then on page 187 the following transpired:

"Q. We were discussing the letter of April 17th, containing that information. I asked you what the agent would have done on receipt of that letter in the usual course of business.

A. He would have bound the coverage right then, but written exactly the same letter he did, asking how much insurance he wanted on each building.

Q. Then Mr. Polimeni would have been covered at the time the agent wired and placed part of the request on the warranty company?

A. That is right.

Q. You could have done that on January 21st under the usual procedure and the authority of Mr. Coffey's position could you not?

A. I hate to say it, but I could have, yes."

Commencing on page 189 of the transcript, while Mr. Sheahan was being cross-examined by Mr. Renfrew the following transpired:

"Q. Now, to get down to this case, Mr. Sheahan, I believe you testified that upon receipt of the letter of April 17, which you have looked at and which is the letter purporting to give the information upon which the insurance was to be written, that you could have covered the prospective customer by writing him and telling him how much you would cover him and then asking how much insurance he wanted on each building.

A. I would have wired him.

Q. That would have been a matter of just your personal way of doing business?

A. If a man wants insurance, he wants it right now, and you might just as well wire, I think.

Q. Actually you could not have bound that insurance without further information?

A. Yes, I could have bound it and then asked him for the information.

Q. Now then, there are three buildings involved in that application of April 17th. Supposing you say you are bound, Mr. Polimeni, but I have to know how much you want on each building.

A. That is what I would have done.

Q. Before he could answer this, the main building burned down. How much would you pay out?

A. The actual value of the building.

Q. But you haven't any contract with him at that time?

A. No.

Q. Do you think your company would have been bound if you had wired?

A. Yes, I do, and furthermore you once came from Naknek and you said you wanted some insurance for somebody down there and I said 'it is covered'.

Q. That is very possible. I don't remember it. But were they covered?

A. They were covered if I said so."

And again on page 192:

"Q. You say back in January, 1948, while you were still in the employ of Mr. Coffey, you would have and could have bound Mr. Polimeni from the informa-

tion contained in the letter of April 17th. Will you state by virtue of what authority as a salesman for Mr. Coffey that you could have bound $10,000 on one risk and one company he had authority to bind?

A. I would have put that in four companies. That is, the $2500, and using that company as a warranty company I would have wired Lloyd's and asked them to cover the other $7500.

Q. These four companies you would have bound in in the amounts of $2500, assuming now that you know and you are testifying from your personal knowledge of the company, what companies would Mr. Coffey have the authority to bind an unprotected risk in, even $2500, on January 21st?

A. I say fifteen hundred or twenty-five hundred.

Q. What four companies?

A. Let's make it twenty-five hundred. Philadelphia Fire & Marine, Canadian Fire, The General Insurance Company of America, Fidelity and Guaranty Fire. There's four.

Q. Is it your testimony that when you left there in January that the Philadelphia Fire Insurance—that Mr. Coffey had binding authority, that he could have bound them to the tune of $2500 on an unprotected risk in Naknek?

A. I think so. One of the four would have taken $2500 and that is all we need to wire Lloyd's.

Q. One of the four?

A. Yes.

Q. Would you have told Mr. Polimeni that he was bound without finding out which one of the four would have taken it?

A. I would have known at that time. It has been quite a while since I have been there. I would have known then which company would take it.

Q. What you are testifying now to is that he had at least four companies and you are sure one of them would have taken an unprotected risk, but you don't know which one?

A. He had more than four."

The attention of the Court is invited to the fact that the only time that the defendant, Coffey, took the witness stand was when he was called as an adverse witness by plaintiff's attorneys. The defendant Coffey failed to take the stand in rebuttal in connection with any of the testimony of the witness Joseph Sheahan. The witness Grace McConnell, Coffey's office manager, upon cross-examination, finally admitted that it would have been possible to place $1500 or $2500 on unprotected property with one of the companies represented by Coffey and that she could have wired Seattle to obtain the balance of the insurance with Lloyd's, but preferred not to do so by reason of her own private underwriting policies.

Appellant contends that there is no substantial evidence to support a judgment in favor of plaintiff and against defendant in the sum of nine thousand two hundred dollars.

On page 46 of his brief appellant says:

> "Certainly plaintiff could have produced real evidence as to what he lost and its value."

In this connection the attention of the Court is invited to Polimeni's letter of April 17, 1948 (Plain-

tiff's Ex. No. 3; Tr. 168) which sets out in general the type buildings to be insured and equipment and inventory; and too, a bill of particulars furnished by plaintiff which itemizes the inventory (Tr. 20); to the testimony of Albert Ruhl commencing at page 122 of the transcript; and to the testimony of Bill Smith commencing on page 74 of the transcript.

CONCLUSION.

In conclusion it is submitted that at the trial of this case plaintiff proved conclusively that the defendant Coffey was negligent in failing to maintain any semblance of office routine to prevent the loss of a document as important as plaintiff's letter of April 17, 1948; that the defendant's office manager was negligent in failing to institute a more thorough search for the letter after she learned it was lost in her office; that she was negligent in failing to refer the matter to Mr. Coffey himself; that failure to place coverage on the property immediately upon receipt of the letter of April 17th, by the methods outlined in the testimony of Joseph Sheahan amounts to negligence. All of the above mentioned questions were fairly placed before the jury and their finding should not be disturbed.

Polimeni had made no attempt to procure insurance elsewhere (Tr. 225).

By reason of prior business transactions with the defendant, plaintiff relied on the defendant's business ability, initiative and efficiency with the result that the

property he had spent the last years of his old age acquiring was completely destroyed by fire without coverage.

Dated, Anchorage, Alaska,
March 2, 1951.

Respectfully submitted,
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